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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/577,982	05/02/2006	Makoto Koizumi	06189/HG	2978	
	7590 11/15/2007 OLTZ, GOODMAN & CH	EXAM	EXAMINER		
220 Fifth Avenue 16TH Floor NEW YORK, NY 10001-7708			STAPLES	STAPLES, MARK	
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1,2,, 1014,1			1637		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary    Time MAILING DATE of this communication appears on the cover sheet with the correspondence address   Period for Reply   ASHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHITCHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.   ASHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHITCHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.   Period of the major by averaged address the previous of 20 FCR 11364, in 80 each, however, may give be triefy field after size (8) MONTHS from the mailing date of this communication.   If to gend to reply a seporated address the manifering period and apply and will be prevented and the previous of the previous and apply and will be prevented and the previous of the priority documents have been received in Appli		Application No.	Applicant(s)				
Mark Staples		10/577,982	KOIZUMI, MAKOTO				
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1)  Responsive to communication(s) filed on	<ul> <li>WHICHEVER IS LONGER, FROM THE MAILING DA</li> <li>Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication.</li> <li>If NO period for reply is specified above, the maximum statutory period w</li> <li>Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing</li> </ul>	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be time rill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE!	I.  lely filed  the mailing date of this communication.  D (35 U.S.C. § 133).				
2a)  This action is FINAL. 2b)  This action is non-final.  3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)  Claim(s)  1-5 and 8-54 is/are pending in the application.  4a) Of the above claim(s)  is/are allowed.  5)  Claim(s)  is/are allowed.  6)  Claim(s)  is/are rejected.  7)  Claim(s)  is/are rejected.  7)  Claim(s)  is/are subjected to.  8)  Claim(s)  is/are subjected to.  8)  Claim(s)  is/are subjected to by the Examiner.  10)  The specification is objected to by the Examiner.  Application Papers  9)  The specification is objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a)  All b)  Some * ○ Note of the priority documents have been received.  2  Certified copies of the priority documents have been received in Application No.  3  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)  1)  Notice of Praftsperson's Patent Drawing Review (PTO-948)  3)  Notice of Informal Patent Application	Status						
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#### **DETAILED ACTION**

### Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-5, 12-43, and 52-54, drawn to oligonucleotides and kits comprising oligonucleotides.

Group II, claim(s) 8-11 and 44-51, drawn to methods for detecting nucleotide sequences including gene polymorphisms.

The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons.

The special technical feature linking Groups I-II appears to be that they all relate an oligonucletide comprising a 2'-O,4'-C-ethylene nucleotide (ENA) unit which is the third nucleotide from the 3'-end of the oligonucleotide. However, Koizumi et al. (June 15, 2003) teach an oligonucletide comprising a 2'-O,4'-C-ethylene nucleotide (ENA) unit which is the third nucleotide from the 3'-end of the oligonucleotide (see Table 1, especially ENA-6).

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Therefore, the technical feature linking the inventions of Groups I-II does not consitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the prior art.

Accordingly, Groups I-VI are not so linked by the same or a corresponding special technical feature as to form a single general inventive concept.

2. Applicant is advised that the reply to this requirement to be complete <u>must</u> include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

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Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

## Notice of Possible Rejoinder

3. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder.

All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP

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§ 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder**. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

### Close

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Staples whose telephone number is (571) 272-9053. The examiner can normally be reached on Monday through Thursday, 9:00 a.m. to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on (571) 272-0782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mark Staples Examiner Art Unit 1637 November 9, 2007

11/13/07